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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/384,422	08/27/1999	PETER PAUL CAMILLE DE SCHRIJVER	Q55464	7818

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[REDACTED] EXAMINER

HOANG, THAI D

ART UNIT	PAPER NUMBER
	2662

DATE MAILED: 05/15/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	09/384,422	DE SCHRIJVER ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Thai D Hoang	2662	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 03 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on Amendment filed on 03/04/2003.
- 2a) This action is **FINAL**.                  2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 3-12 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 3-12 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) The proposed drawing correction filed on \_\_\_\_\_ is: a) approved b) disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) The oath or declaration is objected to by the Examiner.

#### Priority under 35 U.S.C. §§ 119 and 120

- 13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some \* c) None of:
1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) The translation of the foreign language provisional application has been received.
- 15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                              | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____  |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)          | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____. | 6) <input type="checkbox"/> Other: _____                                    |

## DETAILED ACTION

### ***Drawings***

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, “a first communication network” and “a second communication network” must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Furthermore, the drawings are objected to according to the form PTO-948 which is enclosed in previous Office Action.

A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 3-12 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

The specification does not disclose “a first communication network” and “a second communication network” as recited in claims 3, 5-7 and 9-11.

Claims 4, 8 and 12 are rejected because they depend on rejected claims 3, 7 and 11 respectively.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

- (a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

Claims 3, 5-7, 9-12 are rejected under 35 U.S.C. 102(a) as being unpatentable over Hisanaga et al, US patent no. 5,907,556, hereafter referred to as Hisanaga.

Regarding claims 3 and 7, as best understood, Hisanaga discloses a method and system for transporting data between a data sending unit 1 and a data receiving unit 2; see fig. 1-3, 6, 9-12. Hisanaga discloses that the Data sending unit 1, to be used for sending data over a transmission medium 4 through a communications network (a first communication Network) towards the data receiving unit 2 the data for delivering to a destination through another communication network (second communication network, not shown). The data sending unit 1, see fig. 2, 6, and 9-12, comprising:

data sending element 7 (data sending means), adapted to send data towards the data receiving unit 2.

data sending controlling element 6 (service level requesting means) controls bandwidth to be used or the like by using an TCP/IP message for sending to the data receiving unit 2 (col. 3, lines 11-14; col. 8, lines 58-64; service level requesting means for generating an Internet Protocol Control Protocol (IPCP) message, for sending to said

DRE, requesting a service level for communicating said data of said DTE over said second communications network); and

The data sending element 7 sends data to the data receiving unit 2 under the control message of the data sending controlling element 6 and a transmission controlling element 9; see col. 3, lines 16-18, 42-45, 56-62 (adapted to receive from said DRE an IPCP message indicating a proposed service level that said DRE can provide for communicating said data of said DTE over said second communications network, and notifying said DSM of said service level proposal)

Regarding claims 5 and 9, as best understood, Hisanaga discloses that the Data sending unit 1, to be used for sending data over a transmission medium 4 through a communications network (a first communication Network) towards the data receiving unit 2 the data for delivering to a destination through another communication network (second communication network, not shown); fig. 2, 6, and 9-12. Hisanaga discloses that the Data receiving unit 2 comprising:

data receiving element 11 adapted to receive data from the data sending unit 1 (col. 3, lines 45-47).

data transmission controlling information acquiring element (service level request reception means) - fig. 6, 8, 10-12, element 8; fig. 9, element 16 - acquires necessary information among the pieces of data transmission controlling information exchanged between the sending unit and receiving unit before/during/after each data transmission attempt by using TCP/IP message from data sending unit 1; col. 3, lines 26-30; col. 9, lines 13-17, col. 11, lines 56-59 (service level request reception means for receiving an

Art Unit: 2662

Internet Protocol Control Protocol (IPCP) message, from said DTE, indicating a requested service level for said communicating of said data of said DTE over said second communications network)

data transmission rate determination element (service level negotiating and proposing means); fig. 6, 10-12, element 13; fig. 9 element 17, coupled with an data transmission controlling information acquiring element (the service level request reception means); wherein the data transmission rate determination determines a bandwidth to be assigned to each attempt of data transmission based on the requested transmission rate acquired by the data transmission controlling information acquiring element 8 and the states of use of the bandwidth; col. 9, lines 25-29, 60-62; col. 10, lines 11-19; col. 11, lines 59-63 (service level negotiating and proposing means, coupled with said service level request reception means, for determining a service level that said DRE can provide for communicating said data of-said DTE with said second communications network, based on at least one predetermined criterion and on said requested service level, and formulating, as a service level proposal, an IPCP message indicating said determined service level)

data transmission direction sending element 10, fig. 6, 10-12; fig. 9 element 19 (service level proposal sending means) coupled with a data transmission rate determination element, fig. 6, 10-12, element 13; fig. 9 element 17 (service level negotiating and proposing means) for sending a bandwidth to be assigned determined by the data transmission rate determination element 13 assumed to be the available bandwidth, as the data transmission direction information, to the sending unit 1; col. 9,

lines 57-64; col. 10, lines 12-19; col. 11, line 67 – col. 12, line 2; col. 12, lines 26-28  
(service level proposal sending means, coupled with said service level negotiating and proposing means, for sending said IPCP message as said service level proposal)

Regarding claims 6 and 10, as best understood, Hisanaga discloses that the Data sending unit 1, to be used for sending data over a transmission medium 4 (link) through a communications network (a first communication Network) towards the data receiving unit 2 the data for delivering to a destination through another communication network (second communication network, not shown); fig. 2, 6, and 9-12. Hisanaga discloses that the Data receiving unit 2 comprising:

data receiving element 11 adapted to receive data from the data sending unit 1 (col. 3, lines 45-47).

data transmission rate determination element (service level negotiating and proposing means); fig. 6, 10-12, element 13; fig. 9 element 17, coupled with an data transmission controlling information acquiring element (the service level request reception means); wherein the data transmission rate determination determines a bandwidth to be assigned to each attempt of data transmission based on the requested transmission rate acquired by the data transmission controlling information acquiring element 8 and the states of use of the bandwidth; col. 9, lines 25-29, 60-62; col. 10, lines 11-19; col. 11, lines 59-63 (service level negotiating and proposing means, coupled with said service level request reception means, for determining a service level that said DRE can provide for communicating said data of-said DTE with said second communications network, based on at least one predetermined criterion and on said

requested service level, and formulating, as a service level proposal, an IPCP message indicating said determined service level)

data transmission direction sending element 10, fig. 6, 10-12; fig. 9 element 19 (service level proposal sending means) coupled with a data transmission rate determination element, fig. 6, 10-12, element 13; fig. 9 element 17 (service level negotiating and proposing means) for sending a bandwidth to be assigned determined by the data transmission rate determination element 13 assumed to be the available bandwidth, as the data transmission direction information, to the sending unit 1; col. 9, lines 57-64; col. 10, lines 12-19; col. 11, line 67 – col. 12, line 2; col. 12, lines 26-28 (service level proposal sending means, coupled with said service level negotiating and proposing means, for sending said IPCP message as said service level proposal)

Regarding claim 11, as best understood, Hisanaga discloses that the Data sending unit 1, to be used for sending data over a transmission medium 4 through a communications network (a first communication Network) towards the data receiving unit 2 the data for delivering to a destination through another communication network (second communication network, not shown); fig. 2, 6, and 9-12. Hisanaga discloses that the method comprises the steps of:

the data transmission rate determination element 13 located at the data receiving unit 2 determines a bandwidth to be assigned to each attempt of data transmission based on the requested transmission rate acquired by the data transmission controlling information acquiring element 8 and the states of use of the bandwidth; col. 9, lines 12-34 (determining, at said DRE, a service level that said DRE can provide for

communicating said data of said DTE with said second communications network, based on at least one predetermined criterion; formulating, at said DRE, an Internet Protocol Control Protocol proposal indicating said determined service level)

the data transmission direction sending element 10 sends a bandwidth to be assigned determined by the data transmission rate determination element 13 assumed to be the available bandwidth, as the data transmission direction information, to the sending unit 1; col. 9, lines 57-64; col. 10, lines 11-19, and 21-29 (sending said Internet Protocol Control Protocol proposal to said DTE; and receiving said Internet Protocol Control Protocol proposal at said DTE)

The data transmission rate sending element 24 sends the actual value of the transmission rate selected by the data transmission rate selecting element 23 to the data receiving unit 2; col. 13, lines 21-24, 48-52 (transporting said data between said DTE and said second communications network via said DRE according to said level of service indicated in said Internet Protocol Control Protocol proposal)

Regarding claim 12, as best understood, Hisanaga discloses that the method comprises the steps of:

the data sending controlling element 6 located at data sending unit 1 controls bandwidth to be used or the like in accordance with the direction of data transmission received by the data transmission direction receiving element 5; fig. 1-3, 6, 9-12; col. 3, lines 11-16, col. 6, line 67 - col. 7 line 3 (sending, from said DTE to said DRE, an Internet Protocol Control Protocol request indicating a requested level of service)

the data transmission controlling information acquiring element 8 located at data receiving unit 2 acquires necessary information among the pieces of data transmission controlling information exchanged between the sending unit and receiving unit; fig. 1-3, 6, 9-12; col. 3, lines 25-33 (receiving at said DRE said Internet Protocol Control Protocol service level request sent from said DTE), and

wherein the data transmission rate determination element 13 determines the bandwidth to be assigned to each attempt of data transmission according to the requested transmission rate acquired by the data transmission controlling information acquisition element 8 and the states of use of the bandwidth obtained based on the actual value of the transmission rate used by data transmission now under execution received by the data transmission rate receiving element 25; col. 13, lines 41-48 (wherein said determining of said service level at said DRE is based also on said requested level of service of said DTE)

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 4 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hisanaga et al, US patent no. 5,907,556 as applied claims above.

Regarding claims 4 and 8, Hisanaga discloses in figure 12 that the data transmission rate determination element 13 determines the bandwidth to be assigned to

each attempt of data transmission according to the requested transmission rate acquired by the data transmission controlling information acquisition element 8 and the states of use of the bandwidth obtained based on the actual value of the transmission rate used by data transmission now under execution received by the data transmission rate receiving element 25; col. 13, lines 41-48. Further, Hisanaga discloses that the data transmission rate sending element 24 sends the actual value of the transmission rate selected by the data transmission rate selecting element 23 to the data receiving unit 2, col. 13, lines 21-24 (service level proposal renegotiating means for generating another IPCP message requesting a service level, different from the proposed service level indicated in said IPCP message from said DRE, in response to an indication that said proposed service level is not a satisfying service level.)

Hisanaga does not disclose that a service level propose renegotiating means coupled between an output-terminal of a service level propose receiving means and an input-terminal of a service level requesting means. However, all of above features are combined in the Data sending controlling element 6, and data transmission rate selecting element 23. See Nerwin V. Erlichman, 168 USPQ 177, 179 (PTO Bd. of Int. 1969). It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the structure of the data sending controlling element 6 disclosed by Hisanaga to multiple separate means, each means performs a special function in order to reduce a complication when designing the data sending controlling element 6 of the data sending unit 1.

***Response to Arguments***

Applicant's arguments with respect to claims 3-12 have been considered but are moot in view of the new ground(s) of rejection.

In the remarks pages 11-12, Applicants point out that the amended claims having a first and second communication network, which is different with Hisanaga. However, The specification does not disclose this new matter. Furthermore, Applicants argue that the amended claims are different with Hisanaga because a service level is added to the amended claims (page 12, lines 3-5). Examiner respectfully disagrees. Applicants are directed to col. 1, line 21-25, col. 3, lines 26-41; col. 13, lines 41-53, where Hisanaga teaches that the system determines an actual value transmission rate for each data sending unit based on a request and the bandwidth. Therefore, it implies a service level for each transmission unit.

***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Thai D Hoang whose telephone number is (703) 305-3232. The examiner can normally be reached on Monday-Friday 8:30am-5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Hassan Kizou can be reached on (703) 305-4744. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9314 for regular communications and (703) 872-9314 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 305-4700.

Thai Hoang  
May 13, 2003

KWANG BIN YAO  
PRIMARY EXAMINER  
